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SUPREME COURT OF THE UNITED STATES.

Nos. 95—96.

PETER HARMONY AND OTHERS, CLAIMANTS OF THE BRIG MALEK ADHEL,

VS.

THE UNITED STATES.

THE UNITED STATES,

VS.

THE CARGO OF THE BRIG MALEK ADHEL.

ON APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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S. D. Langtree, Print.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland District, begun and held at the City of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-one.

Present—the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States; Upton S. Heath, Judge of Maryland District; Z. Collins Lee, Esquire, Attorney; Thomas B. Pottenger, Esquire, Marshal; Thomas Spicer, Clerk.

Among other were the following proceedings, to wit:

PETER HARMONY, and others, Claimants of the Brig Malek Adhel, *vs.* THE UNITED STATES. } Appeal.

THE UNITET STATES, *vs.* THE CARGO OF THE BRIG MALEK ADHEL. } Appeal.

Be it remembered, that heretofore, to wit, on the twelfth day of July, in the year of our Lord one thousand eight hundred and forty-one, the said Peter Harmony and others, by Jonathan Meredith, John Nelson and John V. L. McMahon, their proctors, and the said United States of America, by Z. Collins Lee, Nathaniel Williams and Reverdy Johnson, their proctors, filed in the circuit court here, a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

District Court Record.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States in and for the Maryland District, begun and held at the City of Baltimore, on the first Tuesday in June, in the year of our Lord one thousand eight hundred and forty-one:

Present—the Honorable Upton S. Heath, Judge of Maryland District; Nathaniel Williams, Esquire, Attorney; Nicholas Snyder, Esquire, Marshal; Thomas Spicer, Clerk.

Among other were the following proceedings, to wit:

The United States, *vs.* The Brig Malek Adhel, her tackle, apparel and furniture, and cargo.	Libel filed 24th April, 1841. Publication, ordered to 1st Tuesday in June, 1841.

Libel.

The United States of America,
District of Maryland, ss.

At a special district court of the United States in and for the district of Maryland, held in the city of Baltimore, in the said district, before the judge of the same court, on the twenty-fourth day of April, in the year eighteen hundred and forty-one, comes Nathaniel Williams, Attorney of the United States in and for the district of Maryland, who prosecutes for the United States in this behalf; and being present here in court in his own proper person, in the name and on behalf of the United States, alleges in forms and declares as follows, that is to say:

First.—That from a certain armed vessel, called the "Malek Adhel," carrying a register as an American vessel, and whereof a certain Joseph Nunez, represented in the said register to be a citizen of the United States, was master, on the high seas, on the twentieth day of July, eighteen hundred and forty, there was made a piratical aggression, and restraint upon a certain vessel, called the Madras, then and there belonging to a subject or subjects of the Queen of Great Britain and Ireland, against the form of the act of Congress in such case made and provided.

Second.—And also, that from the said armed vessel called the Malek Adhel aforesaid, whereof the said Joseph Nunez was master, on the high seas, on the day and year aforesaid, there was committed a piratical aggression and restraint upon a certain vessel, called the Sullivan, then and there belonging to a citizen or citizens of the United States, against the form of the act of Congress in such case made and provided.

Third.—And also, that from the said armed vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the high seas, on the twentieth day of August, in the year aforesaid, there was committed a piratical aggression, and restraint upon a certain vessel, called the "Emily Wilder," then and there belonging to a citizen or citizens of the United States, against the form of the act of Congress in such case made and provided.

Fourth.—And also, that from the said armed vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the high seas, on the day and year last aforesaid, there was committed

a piratical aggression, restraint and depredation upon a certain vessel, the name of which is to the attorney aforesaid unknown, then and there belonging to a subject or subjects of the Queen of Portugal, against the form of the act of Congress in such case made and provided.

Fifth.—And also, that from the said armed vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the high seas, on the day and year last aforesaid, there was committed a piratical aggression by discharge of cannon, and restraint upon a certain vessel, called the "Albert," then and there belonging to a subject or subjects of the Queen of Great Britain and Ireland, against the form of the act of Congress in such case made and provided; and which said Malek Adhel has been captured by a public armed vessel of the United States, that is to say, by the schooner "Enterprize," and has been brought into a port of the United States, to wit, into the port of Baltimore, in the district aforesaid.

By reason of all which the premises and the act of Congress in this behalf made and provided, the said vessel, the Malek Adhel, her tackle, apparel and furniture, and the cargo on board, are liable to be, and of right ought to be adjudged and condemned to the use of the United States, and that of the captors thereof, or the proceeds thereof otherwise distributed, in the discretion of the court.

Wherefore, the attorney aforesaid prays the advice and consideration of the court in the premises, and for an attachment, monition and other process to issue herein, to the end, that the said vessel, the Malek Adhel, may be taken into the custody of the law, and she, together with her tackle, apparel and furniture and cargo, may be adjudged and condemned; and thereafter, a sale and distribution of the proceeds be made according to the provisions of the act of Congress aforesaid.

NATHANIEL WILLIAMS,
Attorney of the United States in and for the District of Maryland.

Claim and Answer.

THE UNITED STATES OF AMERICA
vs.
THE BRIG MALEK ADHEL, her tackle, apparel, and furniture, and cargo.

In the District Court of the United States, in and for the Maryland district.—Information.

And now comes here Manuel X. Harmony, Leonardo S. Swarez, and Bernard Graham, by J. Meredith, their proctor, and claim the

said brig, her tackle, apparel, and furniture, and cargo, as their property; and for their claim and answer unto the said information, they deny that the same are justly and legally liable to forfeiture for any of the causes alleged in said information, or in any count thereof: wherefore, they pray that the said information may be dismissed, with their costs; and that said brig, her tackle, apparel and furniture, and cargo, may be restored to them by decree of this honorable court.

J. MEREDITH,
Proctor for Claimants.

STATE OF MARYLAND,
City of Baltimore, ss.

Be it remembered, that on this 5th day of May, 1841, before the subscriber, a Justice of the Peace of the State of Maryland, in and for the city of Baltimore, personally appears Leonardo S. Swarez, one of the claimants above named, and made oath, that the foregoing claim and answer, and the matters therein contained, are true.

Sworn before T. HANSON, Balt.

Bond for Costs to prosecute the Claim.

Know all men by these presents, that we, Leonardo S. Swarez, and James J. Fisher, are held and firmly bound unto the United States of America, in the full and just sum of five hundred dollars, current money of the United States, to be paid to the said United States of America; to which payment, well and truly to be made and done, we bind ourselves, our, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fifth day of May, in the year of our Lord one thousand eight hundred and forty-one.

Whereas, a libel hath been filed in the District Court of the United States, in and for the Maryland district, against the brig Malek Adhel, her tackle, apparel and furniture, and cargo thereof, for an alleged violation of the laws of the United States, at the suit of the United States; and a certain Manuel X. Harmony, Leonardo S. Swarez, and Bernard Graham, having appeared and claimed the same:

Now the condition of the above obligation is such, that if the above bound Leonardo S. Swarez and James J. Fisher, do and shall well and truly pay to the said United States, the costs and charges which may be decreed by the said District Court, in case the said brig Malek Adhel, her tackle, apparel and furniture, and the cargo thereof, shall be condemned, and in all things comply with the final

decree to be rendered in the premises, then this obligation to be void, else to be and remain in full force and virtue in law.

LEONARDO S. SWAREZ, [L. S.]
JAS. J. FISHER. [L. S.]

Signed, sealed, and delivered in presence of
WM. W. MEREDITH.

Argument to take Testimony.

In the District Court of the United States for the District of Maryland.

Information filed to June Term, 1841.

THE UNITED STATES OF AMERICA
vs.
THE BRIG MALEK ADHEL
and her cargo.
P. Harmony & Co., Claimants.

THE UNITED STATES OF AMERICA
vs.
THE BRIG MALEK ADHEL. } Same.

It is agreed between the parties in this case, by their counsel, that either party may take depositions before one of the commissioners appointed by the Circuit Court U. S. for the southern district of New York for taking bail, &c., on the libellants giving 24 hours' previous notice to any one of the claimants, and on the claimants giving 24 hours' previous notice to the district attorney of the United States for the said district.

NATH'L WILLIAMS, *U. S. Dist. Att'y, for Libellants.*
J. MEREDITH, *for Claimants.*

Baltimore, May 17th, 1841.

Deposition of Daniel Brown on part of the U. States.

In the District Court of the United States for the district of Maryland.—Information, &c.

THE UNITED STATES OF AMERICA
vs.
THE BRIG MALEK ADHEL,
her tackle, &c., and cargo.

Deposition of Daniel Brown in the above entitled case, now pend-

ing in the District Court of the United States of America, in and for the district of Maryland.

Daniel Brown being carefully examined, and cautioned, and sworn to testify the whole truth, deposeth and saith, that he is forty-one years of age, engaged in the merchant service of the United States as master of a packet, sailing between the ports of New York and Charleston, the former place being the residence of the deponent; that he is now, and has been for the last twenty months, in command of the packet brig Sullivan, now sailing between the said ports of New York and Charleston; that he arrived at the last mentioned port of Charleston yesterday, the first day of June instant, and expects to take his departure for New York in about fifteen days from the present date; that while in command, as aforesaid, of the said brig Sullivan, on a voyage from Liverpool, in Great Britain, to the port of Charleston, in the month of July, eighteen hundred and forty, to wit, the eighth day of that month, civil time, at thirty minutes past one o'clock, P. M., in latitude 37° 17 north, longitude about 54° west, the deponent discovered the brig Malek Adhel on his lee bow, heading nearly for the Sullivan, the wind being then south-west, half south. On approaching the Sullivan within three miles, the Malek Adhel hoisted American colors, and the deponent then supposed she was an American vessel of war, from her appearance.

After hoisting American colors, the Malek Adhel tacked and stood for the Sullivan; at three o'clock, P. M. on the same day, the Malek Adhel fired a gun as a signal for the Sullivan to heave to, of which the deponent took no notice, not wishing to be detained, and kept on his course. At fifteen minutes past three o'clock, on the same day, the Malek Adhel fired another gun as a signal for the Sullivan to heave to, when the deponent, being fully satisfied that the Malek Adhel was an American vessel of war, hove to. The Malek Adhel continued to approach the Sullivan, and on coming within about a quarter of a mile from her, the American colors were hauled down and French colors substituted for them on board her; she, the Malek Adhel, passing under the stern of the Sullivan, and her captain hailing the deponent and asking him from whence he had come, and where he was bound to; the deponent having answered those questions, asked the captain of the Malek Adhel where he was bound to, and received as an answer that he was from "Vera Cruz, bound on a cruise." After this, the captain of the Malek Adhel ordered the deponent to come on board of his vessel, which the deponent not hearing distinctly, asked the captain of the Malek Adhel what he had said; on which the captain of the Malek Adhel turned to a person standing near him, who told the deponent that it was his captain's orders that the deponent should lower his boat and come on board of the Malek Adhel immediately. The deponent then asked the captain of the Malek Adhel if he could

not take his own boat and come on board of the deponent's vessel; to which the captain of the Malek Adhel replied in a sneering manner, that his own boat leaked rather too much, and in an authoritative manner again ordered the deponent to come on board of his vessel. The deponent then directed his boat to be lowered, with the intention of complying with the orders of the captain of the Malek Adhel, but on the deponent's wife and a lady passenger remonstrating with the deponent, and objecting to his leaving his vessel, he ordered his chief mate, Mr. Thomas G. Waite, to go and see what was wanted. On the return of the mate from the Malek Adhel, he informed this deponent that the captain of the Malek Adhel wished the deponent to go immediately on board of his vessel and carry with him some lamp oil, some sweet oil, and a half a dozen bottles of wine, for which he, the captain of the Malek Adhel, stated he had the money to pay; and, at the same time, he required the deponent to pay him for the blank cartridges which had been fired from the Malek Adhel. Upon this report of the mate, the deponent ordered the small boat hoisted up, and sail to be made immediately, with the intention of running from the Malek Adhel, (the deponent having no arms on board of his vessel, and not prepared for a contest,) and as the Sullivan was filling her sails to run, the Malek Adhel fired a gun at her, supposed to be a six pound shot, which passed so near his vessel, that the deponent could hear the humming of it, and his cabin was filled with the smoke. The deponent further states that the Sullivan is an American vessel, owned by citizens of the United States, residing in the city of New York.

DANIEL BROWN.

Sworn to and subscribed before me, this second day of June, A. D. eighteen hundred and forty-one.

R. B. GILCHRIST,
Judge of the United States for the District of South Carolina.

UNITED STATES OF AMERICA,
District of South Carolina, sc.

At Charleston, in the District aforesaid, on the second day of June, in the year of our Lord one thousand eight hundred and forty-one, before me, Robert B. Gilchrist, Judge of the United States, for the District of South Carolina, came personally Daniel Brown, master of the brig Sullivan, being about the age of forty-one years, and after being carefully examined and cautioned and sworn to testify *the whole truth*, did subscribe the foregoing and annexed deposition, after the same was reduced to writing by me, and in my own proper hand. The said deposition being taken according to the provisions of the law in such case made and provided, because it was represented to me, in behalf of the United States of America, that the testimony of the said Daniel Brown is necessary in their cause,

depending in the District Court of the said United States, in and for the District of Maryland, against the brig Malek Adhel, her tackle, &c., and cargo; and it appearing from the statement, on oath, of the said Daniel Brown in the foregoing and annexed deposition, that he lives at the city of New York, a greater distance than one hundred miles from the place of trial, and is bound on a voyage to sea; no notification from me to the adverse party, or to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, to be present at the taking of the foregoing and annexed deposition, and to put interrogatories, if he think fit, having been first made out and served on the adverse party or his attorney or any other person, as no such adverse party or attorney or person having the agency or possession of the property libelled at the time of the capture or seizure of the same, was known to me to be within one hundred miles of the place of taking the foregoing and annexed deposition, to wit, Charleston aforesaid.

Given under my hand at Charleston aforesaid, in the district aforesaid, on the day and year above written.

R. B. GILCHRIST,
Judge of the United States for the district of South Carolina.

Deposition of Arthur Stewart, on the part of the libell'ts.

SOUTHERN DISTRICT OF NEW YORK,
City, County and State of New York, ss.

Be it remembered, that on this fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-one, I, George W. Morton, a commissioner, duly appointed by the Circuit Court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed 20th February, 1812; and the act of Congress, entitled "An act in addition to the act, entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed 1st March, 1817; and the act, entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at the United States Courts, in the city of New York, in the said southern district of New York, in the State aforesaid, Arthur Stewart, to testify, and the truth to say, on the part and behalf of the libellants, in the certain suits or matters of controversy, now depending and undetermined in the District Court of the United States, for the district of Maryland, at Baltimore, in which the United States of America are libellants and informants against the brig Malek Adhel, her tackle, apparel and furniture, and cargo—Peter Harmony & Co., claimants.

And the said Arthur Stewart, being about the age of thirty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Arthur Stewart, and he did thereupon depose, testify and say as follows, viz: That he lives in the city of New York, more than one hundred miles from Baltimore, the place of trial; that he is a maker and dealer in chronometers. On being shown the exhibit marked A, and asked whether the same is in his hand-writing, he says it is.

Was the said paper written by you, on or about the day it bears date?

He says it was, and delivered with the chronometer to Peter Harmony & Co., in this way: I directed my man to take the chronometer on board the Malek Adhel, then lying at Pier No. 4, North river, and to deliver it to the captain on board, or whoever might be there to receive it, and take the receipt of the person to whom he delivered it, and carry the same, with the bill and guarantee, to Peter Harmony & Co.

Who is Mr. Cubillos, the person mentioned in the guarantee?

I cannot say—I do not know.

How came his name to be mentioned in the guarantee?

Because he called up and interested himself about the chronometer after its purchase, and enquired about its performance; witness inserted Mr. Cubillos and Captain Nunez' names, because he understood they were to use it. It is witness's practice to insert in the guarantee the names of the persons who are to use the chronometer. Peter Harmony & Co. would know nothing of the performance of the chronometer, and so the names of those who are to use it are inserted.

How did you find out Mr. Cubillos' name?

He told me his name, I think. Witness saw Mr. Cubillos probably three or four times.

Did he make himself busy about it?

Yes, sir, he seemed to interest himself about its performance. A friend of the captain, or a person going out in her, might have done as much.

ARTHUR STEWART.

Read to and subscribed by the witness, Arthur Stewart, on his examination before me, this 15th day of June, 1841.

GEO. W. MORTON,
U. S. Com'r.

Guarantee—(A.)

NEW YORK, *June 26th*, 1840.

I hereby warrant the chronometer, No. 387, by Henry Appleton,

to be of the first class, and that it shall keep a good rate, provided it is not ill used; and I bind myself to change it if Mr. Cubillos or Captain Nunez shall so wish, giving a choice of those of the same class which shall be in my possession, until they are satisfied; it being understood that the chronometer, No. 387, shall not have rec'd any damage from accident, carelessness or improper treatment.

ARTHUR STEWART.

Shown to witness, Arthur Stewart, on his examination before me, June 15th, 1841.

GEO. W. MORTON,
U. S. Com'r.

SOUTHERN DISTRICT OF NEW YORK,
City, County and State of New York, ss.

I, George W. Morton, a commissioner duly appointed by the Circuit Court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812; and the act of Congress, entitled "an act in addition to an act, entitled 'an act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817; and the act entitled "an act to establish the Judicial Courts of the United States," passed September 24th, 1789—do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness, Arthur Stewart, lives in the city of New York, more than one hundred miles from Baltimore, the place of trial.

I further certify, that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the claimants, Mr. Swarez and Bernard Graham, of the firm of Peter Harmony & Co., to be present at the taking of the deposition, and to put interrogatories if he or they might think fit; copies of which notice, with an affidavit of service, is annexed.

I further certify, that on the fifteenth day of June, A. D., 1841, I was attended by claimants' proctor, and U. S. dist. att'y, and by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined, and cautioned and sworn, to testify the whole truth, and the depositions were by me reduced to writing, in the presence of the witness, and from his statements; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing and forwarding the same with my own hand to the court, for which the same were taken.

And I do further certify, that I am not of counsel nor attorney

for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-one, and of the Independence of the United States the sixty-fifth.

GEO. W. MORTON, [L. S.]

United States Commissioner, Circuit Court of the United States for the Southern District of New York, in the second circuit.

District Court of the United States, for the district of Maryland.

THE UNITED STATES
vs.
THE BRIG MALEK ADHEL, her tackle, &c., and cargo.
PETER HARMONY & Co. claim'ts.
} Notice.

Please to take notice, that Arthur Stewart, chronometer seller, will be examined before me (de bene esse) on the part of the libellants in the above entitled cause, (a commissioner duly appointed by the Circuit Court of the United States, for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office at the United States courts, in rear of the city hall of the city of New York, on the fifteenth day of June, instant, at ½ past 1 o'clock, in the afternoon of that day, at which time and place you are hereby notified to be present, and put interrogatories if you shall think fit.

Yours, &c.,

GEO. W. MORTON,
U. S. Commissioner, &c.

Dated New York, the 14th day of June, A. D., 1841.

To PETER HARMONY & Co.,
the above claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

George W. Morton, being sworn, says: that on the 14th day of June instant, he served notices, of which the within are copies, on Peter Harmony & Co., the claimants, by showing the within notices to Mr. Swarez, one of the said firm; the said Swarez at the time having copies of the said notices in his hand, and deponent informing said Swarez, that the examination would take place to-morrow at ½ past one o'clock.

GEO. W. MORTON.

Sworn to this 14th day of June, 1841, before me,
CHA'S D. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James W. Metcalf, clerk of the Circuit Court of the United States for the southern district of New York, do hereby certify, that George W. Morton, whose name, in his own proper hand-writing, is subscribed to the annexed certificates, depositions and exhibits, was, at the time of signing the same, a commissioner duly appointed by the Circuit Court of the United States, for the southern district of New York.

In testimony whereof, I have hereunto subscribed my name, and have affixed the seal of the said Circuit Court, this fifteenth day of June, in the year of our [L. S.] Lord one thousand eight hundred and forty-one, and of the Independence of the United States, the sixty-fifth.

JAMES W. METCALF,
Clerk.

Admission of the Proctors for the U. States.

U. STATES, *vs.* THE MALEK ADHEL, and cargo. } District Court, U. States.

The proctors of the U. States in this case admit, for the purposes of this case, and to have the same effect as if fully proven, that the claimants were, when the Malek Adhel left N. York, the exclusive owners of that vessel, and were such owners during the period the acts stated in the information are alleged by the United States to have been done. And they also admit, that the claimants never contemplated or authorized said acts. They further admit that the equipments of the said vessel when she left New York, and ever afterwards, were the usual equipments of a vessel of her class, on an innocent commercial voyage from that port to Guayamas, the voyage stated in the evidence in this case.

NATH'L WILLIAMS,
and REVERDY JOHNSON,
Balt're, 15 June, 1841. *Proctors for the U. States.*

In the District Court of the United States for the District of Maryland.

THE UNITED STATES, *vs.* THE BRIG MALEK ADHEL, her tackle, apparel and furniture and cargo. } June term, 1841.

Decree.

This cause standing ready for a hearing, the information and

other proceedings and depositions having been read, and witnesses heard, and due deliberation had in the premises, it is thereupon, this seventeenth day of June, eighteen hundred and forty-one, by me, Upton S. Heath, judge in and for the District of Maryland, and by the authority of this court, ordered, adjudged and decreed that the said brig Malek Adhel, her tackle, apparel and furniture, be, and the same is hereby condemned, and that the same be sold by the marshal of the district of Maryland, after due and legal notice of such sale, and the proceeds be brought into this court, to await the further order of the court in the premises.

It is further ordered, adjudged and decreed, that so much of the libel of information filed herein, as prays condemnation of the cargo of the said brig, be, and the same is hereby dismissed, and that the part of the said cargo, claimed by John A. Robinson, be restored to the claimant thereof, or his proctor; and that the residue of the said cargo be restored to Peter Harmony and Company, claimants thereof, their agent or proctor, except so much of the residue aforesaid, as may have been sold by a prior order of this court, or the Judge thereof; the proceeds of which sales, if any, after payment of the costs, are directed to be paid to the said last mentioned claimants, their agent or proctor.

It is further ordered, adjudged and decreed, that the costs incurred herein, by reason of the filing of the said claim of the said Peter Harmony and Company, including the attendance of the witnesses during the term, the custody fee of the marshal, the guards and the wharfage during the same time, to be paid by the said claimants, the residue of the costs to be deducted from the proceeds of the property condemned.

U. S. HEATH, *Dis. Judge.*

Motion to take the Testimony of the Seamen in writing by the Clerk.

THE UNITED STATES
vs.
The brig MALEK ADHEL,
her tackle and cargo.

In the District Court of the United States for the District of Maryland.

June Term, 1841—Appeal, &c.

The counsel for the United States in this case, beg leave to suggest to the Honorable the District Court, that the witnesses being all seafaring men, it will probably not be in the power of the United States to produce the said witnesses who have testified herein before the Circuit Court of the United States, to which the appeals prayed in this case are to be heard and decided.

They, therefore, move the court that the testimony of said witnesses may be taken down in writing by the clerk of this court, according to the provisions of the act of Congress in such case made and provided.

NATHL. WILLIAMS, *U. S. Dist. At'y.*
REVERDY JOHNSON, *for the U. States.*

Order of Court.

17*th June*, 1841.

The appeals from the decree of this court in the above case, having been prayed and granted, and the above suggestion having been made, and the court being satisfied that probably it will not be in the parties' power to produce the witnesses testifying in the above case before the circuit court:

It is thereupon, this 17th day of June, 1841, upon motion, ordered by the court, that their testimony be taken down in writing by the clerk of this court.

U. S. HEATH, *Dist. Judge.*

Agreement.

We agree that the notes of the evidence taken in the above cause by William W. Meredith, Esq., shall be regarded as taken by the clerk, in pursuance of the above order, and may be used in the circuit court in like manner as if taken down by said clerk.

NATHL. WILLIAMS, *Dist. At'y.*
J. MEREDITH, and
J. NELSON, *for Claimants.*

Balt. 17 June, 1841.

Appeal of the Claimants from the Decree of Condemnation.

From so much of which said decree, so as aforesaid rendered, as condemns the said brig Malek Adhel, her tackle, apparel and furniture, as forfeited, the said Peter Harmony & Co., the claimants thereof, by the proctors, have prayed an appeal to the Circuit Court of the United States for the fourth Circuit in and for the Maryland District, to be held at the city of Baltimore, on the first Monday in November next; and to them it is granted.

Appeal on the part of the U. States.

And from so much of which said decree so as aforesaid rendered, as orders the restoration of that part of the cargo claimed by the said Peter Harmony & Co. to the said claimants; and also from so

much of which said decree, as orders a certain portion of the costs incurred in the prosecution to be paid out of the proceeds of the property condemned and ordered to be sold, the said United States of America, by their proctors, have prayed an appeal to the said circuit court, to be held at the time and place aforesaid; and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are transmitted accordingly.

Appeal Bond.

Know all men by these presents, that we, Leonardo S. Swarez, Bernard Graham, andM. X. Harmony, and James J. Fisher, are held and firmly bound unto the United States of America, in the full and just sum of two thousand dollars, current money, to be paid to the said United States of America, their certain attorney or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 24th day of June, in the year of our Lord one thousand eight hundred and forty-one.

Whereas, at a district court of the United States in and for the Maryland District, begun and held at the city of Baltimore on the first Tuesday in June, in the year of our Lord one thousand eight hundred and forty-one, the said United States of America obtained a decree of condemnation against the brig Malek Adhel, her tackle, apparel and furniture, from which said decree, so as aforesaid rendered, a certain Manuel Harmony, Leonardo S. Swarez, and Bernard Graham, claimants of the said brig Malek Adhel, her tackle, apparel and furniture, by their proctors, have prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November next, and to them it is granted.

Now the condition of the aforegoing obligation is such, that if the said Manuel X. Harmony, Leonardo S. Swarez, and Bernard Graham, shall well and truly prosecute with effect their said appeal, and pay to the said United States of America all such damages, costs and charges as may be decreed by the said Circuit Court, in case they shall fail to make good their said appeal, and in all things abide by and fulfil such final order and decree as may be passed in the premises, then the aforegoing obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

LEONARDO S. SWAREZ, [L. S.]
BERNARD GRAHAM, [L. S.]
M. X. HARMONY, [L. S.]
JAS. J. FISHER. [L. S.]

Signed, sealed and delivered in presence of
R. D. ZALDO,
WM. W. MEREDITH, to the signature of Jas. J. Fisher.
I consider this bond as sufficient.

REVERDY JOHNSON.

26 June, 1841.

Approved 29th June, 1841.

U. S. HEATH, *D't Judge.*

In testimony that the aforegoing is a true copy taken from the record and proceedings of the District Court aforesaid, I [L. S.] hereunto subscribe my name, and affix the seal of the said District Court, this twelfth day of July, in the year of our Lord one thousand eight hundred and forty-one.

THO. SPICER, *Clk. Dist. Ct.*

And now here, at this day, to wit, the eighth day of November, in the year of our Lord one thousand eight hundred and forty-one, the said United States of America, by Z. Collins Lee, their proctor, file in the Circuit Court here an amended information against the brig Malek Adhel, her tackle, apparel and furniture, and cargo, in the words following, to wit:

Amended Information.

THE UNITED STATES OF AMERICA,
District of Maryland, ss.

At a Circuit Court of the United States for the fourth circuit in and for the District of Maryland, held in the city of Baltimore, in the said district, before the judge of the same court, on the eighth day of November, in the year eighteen hundred and forty-one, comes Z. Collins Lee, attorney of the United States in and for the District of Maryland, who prosecutes for the United States in this behalf, and being present here in court in his own proper person, in the name and on behalf of the United States, alleges, informs, and declares as follows, that it is to say:

First.—That from a certain armed vessel, called the "Malek Adhel," carrying a register as an American vessel, and whereof a certain Joseph Nunez, represented in the said register to be a citizen of the United States, was master, on the high seas, on the twentieth day of July, eighteen hundred and forty, there was made a piratical aggression and restraint upon a certain vessel called the Madras, then and there belonging to a subject or subjects of the Queen of Great Britain and Ireland, against the form of the act of Congress in such case made and provided.

Second.—And also, that from the armed vessel called the Malek Adhel aforesaid, whereof the said Joseph Nunez was master, on

the high seas, on the day and year aforesaid, there was committed a piratical aggression and restraint upon a certain vessel called the Sullivan, then and there belonging to a citizen of the United States, against the form of the act of Congress in such case made and provided.

Third.—And also, that from the said armed vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the high seas, on the twentieth day of August, in the year aforesaid, there was committed a piratical aggression and restraint upon a certain vessel, called the "Emily Wilder," then and there belonging to a citizen or citizens of the United States, against the form of the act of Congress in such case made and provided.

Fourth.—And also, that from the said armed vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the high seas, on the day and year last aforesaid, there was committed a piratical aggression, restraint and depredation upon a certain vessel, the name of which is to the attorney aforesaid unknown, then and there belonging to a subject or subjects of the Queen of Portugal, against the form of the act of Congress in such case made and provided.

Fifth.—And also, that from the said armed vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the high seas, on the day and year last aforesaid, there was committed a piratical aggression, by discharge of cannon, and restraint upon a certain vessel called the Albert, then and there belonging to a subject or subjects of the Queen of Great Britain and Ireland, against the form of the act of Congress in such case made and provided.

Sixth.—And also, that from the said armed vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the day and year last aforesaid, there was committed an aggression, restraint and depredation, upon a certain vessel, the name of which is to the attorney aforesaid unknown, then and there belonging to a subject or *to a* subjects of the Queen of Portugal, also to the attorney aforesaid unknown; which said aggression, restraint and depredation was hostile, and done with intent to destroy and plunder the said last mentioned vessel, and in violation of the laws of nations.

Seventh.—And also, that the said vessel, called the Malek Adhel, whereof the said Joseph Nunez was master, on the high seas, on the day and year last aforesaid, there was committed an aggression by discharge of cannon, and restraint upon a certain vessel called the Alert, otherwise called the Albert, then and there belonging to a subject or to subjects of the Queen of the United Kingdom of Great Britain and Ireland, to the attorney aforesaid unknown, which said aggression was hostile and done with intent to sink and destroy the said last mentioned vessel, in violation of the laws of nations. And which said Malek Adhel has been captured by a public armed vessel of the United States, that is to say, by the

Schooner Enterprize, and has been brought into a port of the United States, to wit, into the port of Baltimore, in the district aforesaid. By reason of all which the premises, and the act of Congress in this behalf made and provided, and by the laws of nations, the said vessel, the Malek Adhel, her tackle, apparel and furniture, and the cargo on board, are liable to be, and of right ought to be adjudged and condemned to the use of the United States, and that of the captors whereof, or the proceeds thereof otherwise distributed in the discretion of the court.

Wherefore the attorney aforesaid prays the advice and consideration of the court in the premises, and for an attachment, monition and other process to issue herein, to the end that the said vessel, the Malek Adhel, may be taken into the custody of the law, and she, together with her tackle, apparel, and furniture and cargo, may be adjudged and condemned, and thereafter a sale and distribution of the proceeds be made according to the provisions of the act of Congress aforesaid.

Z. COLLINS LEE, *Dist. Att'y.*
NATH. WILLIAMS,
REVERDY JOHNSON,
For U. States.

THE UNITED STATES OF AMERICA,
vs.
BRIG MALEK ADHEL and cargo.

Evidence of Jno. Myers.

John Myers, a witness, produced and examined on the part of the United States, deposes as follows:

That he was not first mate when he joined the Malek Adhel; Peterson was first mate; witness joined her 23d June, 1840. On Friday, afterwards, Peterson came on board, hauled the vessel out into the stream. On Sunday, Captain Nunez told Peterson to go on shore on account of a quarrel; Peterson was intoxicated; witness was then made first mate; witness told the captain, that one of the crew (W. R. Crocker) was competent to go out as second mate, and he was then promoted to that office. On Tuesday, 30th June, took pilot, got under weigh about ten or eleven o'clock that day, and went to sea; discharged the pilot on afternoon of same day; fourth or fifth day out, captain said the chronometer would'nt speak, had forgotten to wind it up; on the 6th of July, saw a vessel standing to the northward, and we to the eastward, five or six miles apart; ran down to the vessel and hove maintopsail back; ran to leeward and then to windward of her, and fired a blank cartridge; hailed the vessel and asked "where from?" they said from Savannah, bound to Liverpool; we hailed her again, and told her to send her boat alongside; she sent her boat with four men and

an officer, and they came alongside; Captain Nunez asked if they had a chronometer; officer in the boat said he did not know whether they had or not; would go on board and see; went on board and returned in about half an hour with a chronometer; brought it on board, and while we were regulating our chronometer, our captain and four men went on board the other vessel, which was the "Madras, of Hull;" captain staid on board a short time and then returned; *they* then took their chronometer and returned to their vessel, the Madras; while we were hoisting our boat up and securing her, the Madras made sail; as soon as the boat was secured, we ran to leeward some distance, and fired another blank cartridge, but not in the direction of the Madras, and then proceeded on our own course. Next, about 9th or 10th July, a vessel was standing to the westward, we to the eastward; captain said he would run after the vessel and catch her, as he wanted to send a letter to New York; made sail after her, and finding we did not come up very fast, we fired a blank cartridge; they still not taking any notice, our captain told the men to load a gun with shot; loaded the gun with shot and fired, when the other vessel hove her maintopsail back; we were about half a mile apart; we both had our American flag flying at first; when the second shot was fired, Captain Nunez ordered the Mexican or Columbian flag to be hoisted; we then hailed; they said they were from Liverpool, bound to Charleston; her name was the brig "Sullivan;" she was an American vessel; had "Sullivan, New York," on her stern; hailed her, and told her to send a boat alongside; while they were coming, our captain told Martin (called Peter Roberts in the shipping articles,) to tell the crew not to speak any English, while the boat was alongside; this order the captain first told him in Spanish, then in English; when the boat came alongside, they asked where we were from; captain told Martin in Spanish, to say, we were from Vera Cruz, bound to Barcelona, and out forty-five days; Martin did so; our captain then told him we wanted some lamp oil; the officer in the other boat said he did not know whether they had any, but he would go on board and see; when they reached their own vessel, they hoisted their boat, and proceeded on their course; we had lamp oil sufficient to last us twelve months; after they proceeded on their course, we made sail likewise; ran to leeward and fired a shot at her; this fire our captain ordered Martin to make; he, (Martin,) generally acted as gunner. Martin belonged to Malaga, and spoke Spanish; at the time of second fire, the vessels were about an eighth of a mile apart, hailing distance; we then kept on, and she did the same; the gun was fired at her; we were then standing to eastward, she to westward; did not see where the ball struck.

The next vessel we saw and spoke, was the "Ten Brothers;" this was two or three days after the affair with the Sullivan; passed her without doing any thing. Next vessel we met, was the "Vigilant, of New Castle, England;" spoke her; she shewed English

colours; hailed her and told her to send her boat alongside; she did so. Nunez asked if they had a chronometer; they said they had none; they were out of water, and wanted bread; we gave them two small barrels and some bread, by our captain's orders; we went on our course. The next vessel we met, was the San Domingo, two days afterwards; our captain was acquainted with the passengers on board; he asked them to dine with him, which they did; after they left, Captain Nunez told witness, that the passenger had been a slaver, and was just returning from a prosperous voyage; the vessel belonged to Terceira, one of the Western Islands; she was Portuguese; we laid together that night, and the next morning the Portuguese sent on board of us to buy provisions; we then parted company, and two or three days after, went into Fayal; Nunez said his intention in going to Fayal, was to repair the vessel, and get his chronometer rated; remained there five or six days; had one carpenter employed four days, who did some slight work; he made a side ladder and some awning extensions, and put her to her head to find out leak. The principal leak was about eight or ten inches above the water line; the vessel leaked at sea, but not at Fayal; leaked as bad after we left there as she did before; the place of the leak discovered at Rio; there never having been oakum at all in that part of the seam, could put a knife in the seam; leak came into cabin; that leak was not stopped at Fayal.

We took in at Fayal potatoes, bread, and beef, for the use of the crew; we also took in two men as passengers, and a cabin boy; one of the passengers was named Silvie and the other Curry; the boy is here; the last I saw of the passengers was at Rio; got under weigh from Fayal on Tuesday; do not know whether Nunez knew the two passengers before he saw them at Fayal; came to anchor and waited until Wednesday; there was a pleasure party to come on board to sail about the harbour; in attempting to tack she missed stays, captain at the helm; missed stays a second time; we were about twenty yards from the rocks; Nunez knew nothing of the usages of an American vessel before we left New York; I always worked the vessel myself; Nunez might have known, but he did not speak English well enough to make the men understand. After the sailing match about the harbour, we left Fayal with the whaling vessel Minerva, from New Bedford; Nunez went on board of her and took the chronometer to have it rated; had had nothing done with it at Fayal; Nunez knew nothing about managing a chronometer, tho' it is the captain's duty. Captain Nunez remained on board the Minerva five or six hours; he went on shore at Fayal before we had our sails furled; he went in a shore boat. After Nunez came from the Minerva we made sail and proceeded on our course; he brought chronometer with him: next day we saw a vessel standing to westward with all sail set, going directly before the wind; we were standing to southward; Nunez ordered us to chase her; finding we did not come up very fast we fired, by

Nunez' orders, a blank cartridge towards her; she still went on her course; Nunez ordered one of the guns to be shotted and fired at her, which was done; she then hove her maintop back; we were then about a mile astern of her; we rounded to, to fire at her; we came up, hailed her; she said she was from Palermo, bound to Boston; she was the "Emily Wilder;" told her to send her boat alongside with their chronometer; they came along side with the chronometer; we rated ours by it; I rated it and found a difference of time, and noted it in the log-book; after comparing the time of the two, they then took chronometer and went on board again; I made the entry in the log-book; we each made sail and stood on our course; they asked us no questions, except where we were from; Nunez said, from New York, bounded around Cape Horn; we stood to southward until 4th of August; the day before, Captain said he was going to Rio; I told him it was a bad place to go, because it was a rendezvous for American vessels of war; on the 4th of August Nunez came on deck about half-past seven in the evening, and found fault with some orders witness had been giving, and Nunez told me he did not want me to do more work on board the ship, and I accordingly went off duty; we ran on our course; that night Captain Nunez had the watch from eight to twelve; I heard a noise on board, went up and saw a vessel close ahead on the weather bow; when we came up Nunez hailed her, and told them to heave the maintop back; they did so, and we did the same; this was about ten o'clock at night; hailed them again, and told them to send their boat aboard of us with the Captain and his papers; this they said they could not do, as their boat leaked and the night was dark; Nunez then got angry and told us to double shot the gun; it was done, and fired towards the strange vessel; Martin directed the gun; we were within close hailing distance. Curry, the forementioned passenger, then hailed in English and told them again to send their boat; the other Captain answered in Portuguese or Spanish. Curry told witness that the answer was, "they might sink their brig, but he could not come on board." Nunez then told us to lower our boat and go on board the strange brig; Curry, Crocker, the second mate, Peter Roberts, (Martin,) John Gray, and Dill or Smith, then went on board the stranger; Curry and Crocker had each a pair of pistols, they were buckled in a belt round their bodies; our boat returned in about three quarters of an hour with Curry and the Captain of the strange brig, and three of her men; Curry and the Captain came on board the Malek Adhel, the men remained in their boat alongside; the strange Captain gave Nunez a tin box with the ship's papers, I believe; ship's papers are carried in such boxes. Curry and Captain Nunez took them down below; strange Captain remained on deck; I saw them down the companion way, examining the papers in the cabin; they had them about a quarter of an hour, and then brought them up and gave them to the Portuguese Captain; Nunez

spoke English and told Curry to tell strange Captain he must pay twenty dollars for the shot Nunez had fired at him, and ten dollars for a keg of oil which had been knocked over by the recoil of the gun. Nunez also told Curry in English to look and see if there were any guns and powder on board the other vessel, and if there were any, to spike the guns and bring the powder on board, and see if any sweetmeats were on board, and bring them on board also; they then shoved off, Curry with them, and went to the Portuguese vessel; Nunez told me that the Portuguese vessel was from Rio Grande, bound to Oporto, with a cargo of hides and horns; in half an hour after our boat returned with those who originally went on board the Portuguese vessel, and brought a jar of sweetmeats, one dog, and twenty dollars for the shot; after the boat was secured Captain Nunez put me on duty again; this was two o'clock in the morning; Curry told me he had got twenty dollars for the shot, but was ashamed to ask for the other ten for the oil; I saw Curry give the captain the money in Spanish dollars; Curry said he would'nt take Brazilian money, which was first offered him by the Portuguese captain; after that we left the vessel and proceeded on our course. The next vessel we met was on the 10th or 12th of August; they were standing to northward, we to southward; when she came abeam of us, she tacked ship and went in the same direction with us; in about two hours after we hove our maintop back and ran foul of each other; Captain Nunez got enraged and told them to shot the gun and fire at the stranger; it was done; we fired a second shot; Nunez ordered the second shot.

When the first shot was fired, we were close hailing distance; and also, when each shot was firedd; we fire five times, gun shotted each time. After the fifth fire all our powder was gone: Nunez then told Martin something witness did not understand, and Martin then told the crew, he, (Captain Nunez,) said, he would give five hundred dollars to any volunteers of his crew, who would go and bring the captain aboard. Nunez asked me to go. I told him, I did not like it. He told me not to be afraid, and gave me his dirk; I threw the dirk down on the deck, and said to Nunez, I was afraid to go on board with the boat, for fear they would throw something in the long boat and sink her, when we were alongside. Nunez said, he wanted to bring the other captain on board the Malek, and give him twenty-five lashes; we were then some distance astern. Nunez told Martin to take two men, Dell and Helm, and go on board; they did so, and remained half an hour; they returned and brought back with them the time. I saw one shot go through the flying jib; it was the second shot. When Martin came back, he told Nunez he must send his chronometer with an officer, and rate it; I took the chronometer, went on board the other vessel, and rated it. Strange captain asked me why Nunez had fired at him; I said I did not know; the captain had ordered it. He asked me where we were bound. I said,

"God only knows." When I returned to the Malek Adhel, I told Nunez what had happened, and he laughed. The strange brig was the "Albert;" she was an English brig and bound to Rio; her stern sign was disfigured; she had English colours flying. We then proceeded on our course, and made the Brazils about the twentieth or twenty-first of August; the land was some miles north of Cape Antonio. The passengers on board told me they were to go to Bahia. We got to Bahia about six o'clock in the evening, and Curry, Silvie and the captain went ashore. They came on board again about nine o'clock next morning, and Nunez told me to make ready to clear the cargo, as he was going to repair his vessel. Nunez staid about half an hour on board and went ashore again. Next morning got all clear, and about half-past eleven Nunez came on board; the men told me they would do no more work until they saw the American consul; this was told me before Nunez came on board; when he came, I told him; he asked me if I wanted to see the consul too. I said "yes." He then said, "very well, I will go ashore and see." He went on shore, and the next morning between nine and ten o'clock, he came on board again. He told me to tell all the crew, who wanted to see the consul, to come aft, and go on the larboard side; the whole crew went on the larboard side, Martin among them. The second mate, Mr. Crocker, and four or five men, went on shore that day; they staid on shore until about three o'clock, and then returned. Captain Nunez came on board the next morning, and told me the consul wanted to see me, and that I must go on shore with him. We went to the consul's office, and he asked me about these charges. I had kept an account of some small transactions on a piece of paper; I gave it to the consul. The captain said I could be discharged, if I desired it; but the consul said, "not until the affair was settled." By small transactions, witness means the firing, &c. Captain Nunez admitted that it was all right, as I had put it down. I told the American consul the same story, as I am now telling. When we were going ashore, Nunez said, "suppose I sell the brig, how much she worth?" He also said one man had offered to give him twenty-two thousand dollars for her. I told him I did not know how much she was worth. I staid on shore until two o'clock, and then went on board again; that night, about one or two o'clock, a vessel ran foul of us, and tore away our jib-boom. The next morning while we were repairing it, the captain came on board and told me the consul wanted to see me. I went, returned afterwards on board, got my clothes and went ashore, where I remained nine or ten days; went on board, afterwards, the American brig Yankee, and remained there until the Enterprize, a United States schooner, seized and took the Malek and her crew. There were four men shipped by the captain at Bahia, after I left the brig; they were one Portuguese, one Spaniard, one English and one American.

The crew were examined in succession by the consul. We left Bahia on the 26th September, under the charge of Lieut. Drayton, on board the brig; nine men and two officers were put on board; we then went to Rio; four of our crew were from the schooner Enterprize; we left Martin and the cook behind at Bahia. The day I returned from the consul's on board the Malek, Nunez and the cook had a quarrel, and Nunez struck the cook; cook said "when I shipped, I did not know I shipped on board a slaver." I saw Captain Nunez at Rio, in prison. We staid at Rio from the second of October until the first of March. We were taken before the authorities at Rio; they let the captain out of prison. I saw him afterward walking about in Rio. I left Rio in the Malek, under the command of Lieut. Ogden and with the crew who are now in prison, where we have been since we arrived. Lieut. Ogden had on board, besides ourselves, four men and one midshipman. I kept the log-book of the Malek; Captain Nunez got it from me, to take it to the consul the day we went before him. It was laid before the consul and I never saw it afterwards. The log-book contained some of the particulars about the firing. (Here a book is shewn to the witness.) This book was kept by the captain. Lieut. Drayton kept a log-book from Bahia to Rio.

Cross-Examination.

Upon cross-examination, the witness further deposed: While I was on board the Yankee, a midshipman and four men came on board and ordered me on board the schooner Enterprize. I was not imprisoned at Bahia. Peter Roberts (Martin) was among the men who went on the larboard side. I do not know whether the pistols Curry carried were loaded or not; one pistol out of the four was loaded, I know. The men who accompanied Curry were unarmed, to the best of my knowledge. The Albert answered the hail of the Malek Adhel. Our brig had her name on the stern. I I saw Curry put the money down on the cabin table. I did not tell any one I had seen the money counted out. On my examination at Bahia, I stated that Curry had told me that he had received the money. I do not recollect whether I stated then that I saw it. The cook's deposition was not taken, that I know of. Silvie and the boy were in the cabin with Nunez and Curry. I am from Philadelphia, but have sailed out of New York for the last five years. Have sailed as mate twice before. Before the offer of five hundred dollars, made by Nunez to his crew to board the Albert, he had not ordered the crew, nor had they refused to go.

Deposition of William R. Crocker.

William R. Crocker, a witness, produced and examined on the part of the U. States, deposes as follows:

Is a native of Massachusetts. Was engaged 25th June, 1840,

as seaman on board the Malek Adhel; was afterwards promoted to second mate. We left New York on the 30th June, and on the fifth morning afterwards we fell in with the "Madras," bound from Savannah to Liverpool. Captain Nunez said he wanted to see how our vessel sailed, and called me up to see how fast she was going. I went up, and soon afterwards Nunez ordered one of the guns to be fired with a blank cartridge. I think we were steering at that time east south-east; the Madras was going north-east by north. We ran under her lee, and hailed her; she backed her main-yards, and we did the same. When we hailed her, our orders were, to know if she had a chronometer on board; and if so, to send it on board the Malek Adhel. Madras then lowered her boat with an officer and four men; they came on board of us, but did not bring a chronometer. Captain Nunez ordered him to go aboard his own vessel (the Madras) again, and if he had a chronometer, to bring it. He did so, and the boat returned again with the chronometer. Myers, the first mate, compared the time, and while he was doing so, Nunez himself left the Malek and went on board the Madras. He had four men with him. After the boats returned, each to their respective vessels, we passed under the larboard bow of the Madras, and proceeded on our cruise. Previous to Nunez's going on board the Madras, he gave no reasons for boarding her. I saw the handle of a dirk in his bosom.

The next vessel we met was the Sullivan, and this was on the 9th of July. She was steering west south-west; we, east. She was on our starboard bow; Nunez ordered us to fire a blank cartridge, which was done, when we got round her; we chased her for ten minutes; she still proceeded on her course, and Nunez ordered Martin to shot a gun, and fire it whenever he was ready,—it was done. We were then about a mile and a half apart. We fired in the direction of her. The gun was a nine-pound medium. She then hove to. We came up and hailed her. She was from Liverpool and bound to Charleston. They then asked us where we were from, and Martin answered, "from Vera Cruz, bound to Barcelona, and forty days out." Martin ordered us not to speak a word of English on board; he only was to speak in Columbian. After the first shot, we ran up the Mexican flag,—previous to that we had the American flying. The Sullivan bore the American flag. Nunez was present when Martin gave us our orders. Either Martin or Nunez told the Sullivan that we were in want of lamp oil, tho' we had at least twenty gallons on board at the time. The Sullivan then lowered her boat with four men and an officer; and Nunez told us, as they were coming aboard, "you no speak one word English,—no use." When the officer came on board the Malek, Martin spoke to him about the oil; and the officer said he would go on board again and see if he could get some. When he returned with his boat on board the Sullivan, they hoisted their boat and went on their course; we were then about an eighth of a

mile distant,—when the second shot was fired, we were about half a mile. We fired the second shot at her because she would not bring us the oil. We then proceeded on our course.

The next vessel we met was the Ten Brothers, from Boston; spoke her, merely, and passed. The next vessel we met was an English brig, the "Vigilant," which wanted bread and water; we gave her three kegs of water and some bread. She hailed us first. Nunez took his boat and went on board of her. The next vessel we met was a French brig; spoke her, merely, and passed,—do not know her name. The next vessel was a Portuguese. We fell in with her in the forenoon; we sent our boat to her and took from her two gentlemen, one of whom was acquainted with Nunez. Captain Nunez told me that he had known the passenger on the coast of Africa, where they had both been captains of vessels. They dined with us, and returned in our boat in the evening, and Captain Nunez went with them. We lay together all night, the wind being light. The next morning, about ten o'clock, she sent her boat, and we supplied her with chickens, eggs, and codfish, and in the afternoon, a breeze springing up, we parted company. In two or three days afterwards, we went into Fayal; and the reason the captain gave us for going in, was, that the vessel was leaking. We remained there from Saturday until Wednesday. We had a carpenter on board from Monday until Tuesday afternoon. He did about half an hour's work; made a side ladder and six awning extensions. Sailed from Fayal with the whaling vessel "Minerva," from New Bedford. Nunez took the chronometer on board the Minerva to rate it. He did not have it rated at Fayal. When he returned from the Minerva, we proceeded on our course.

Two or three days after leaving the Minerva, we fell in with the American vessel, Emily Wilder, from Palermo, bound to Boston. When we first saw her she was standing north-west, and we south-west; Captain Nunez told me that he wanted to correct his chronometer. We wore ship and chased her; we did not gain on her, and fired a blank cartridge at her. Captain Nunez then gave orders to fire a shot; we were then about two miles and a half off; we fired towards her. She then backed her main-yards; we ran under her stern, and found she was the "Emily Wilder." We asked them if they had a chronometer; they said "yes," and their chief mate, with three or four men, came on board the Malek with it; one of the men of the Emily Wilder took a letter from Roberts to Captain in Charleston. He asked us where we were going? I told him, "I did not know, our course was a crooked one;" and we then parted. The next vessel we met was a Portuguese brig, four or five days afterwards. We met her in the night; I was asleep; that day Myers, the chief mate, had been put off duty. I went on deck; there was a great bustle; captain Nunez said, "I want catch that vessel bye and bye, you see what I do." He asked me to hail her. I did so, but she did not hear us. Nunez then took the speaking trumpet himself, and afterwards, Curry. We took Curry, Silvie

and a boy on board at Fayal. Curry hailed in Portuguese. He told her to send her boat on board; the strange captain said he could not, his boat was leaky. Nunez then ordered Martin to put two shot in the gun and fire. We were within an hundred feet of each other; the gun was double shotted; this was between ten and eleven o'clock at night, the wind blowing fresh. Curry told me that the strange captain had said, "you may sink me, but I have no boat that will float." In firing the gun, she parted her breeching, recoiled and upset a keg of oil. Nunez then ordered me to have the boat lowered down, which was done; three men, Curry and myself, went in her. Curry had a pair of pistols; one was loaded, the other was not. Curry said he was sorry they were not both loaded; the three men who got into the boat with us, were John Grey, William Smith and Benjamin Dill. Captain Nunez handed me a pair of pistols which were not loaded. I said to the captain, why do you want me to go on board that vessel? He said "go." When we got on board, Curry asked for the papers; Curry spoke in Portuguese, but afterwards told witness that he had told the strange captain that we were a British cruizer from Bristol or Plymouth, looking for slavers. When they were below captain showed his papers to Curry; they spoke in Portuguese, but Curry told me afterwards what they had said. Curry, the Portuguese captain, and three of his crew, took our boat, left us on board the Portuguese, and went to the Malek Adhel. We remained about an hour on board the stranger; and afterwards returned to the Malek in our own boat, Curry with us. Curry demanded of the strange captain some money; don't know how much; captain went down and brought it up; don't know how much there was. I saw the strange captain give it to Curry. By the way Curry spoke, he must have demanded the money. I asked for a nice dog I saw, and the captain gave it to me. One of passengers brought up a jar of sweetmeats and gave it to Curry. We then returned to our own brig; the money was silver dollars. We then proceeded on our course. This was on the 4th of August; Curry had all the orders for conducting the boat; I steered it; this occurrence took place at night. We were together about three hours. I did not hear Munez give Curry his orders; Curry told me the captain had ordered him to take any sweetmeats, or any young nigger he might find aboard the Portuguese vessel. On the 12th of August we saw a large brig on our weather bow; we were both on the wind, steering the same course. At half past eleven, we spoke her; she was the Alert or Albert, a British brig; she was from Cadiz to Rio de Janeiro bound, with salt. I hailed the brig and asked if he had a chronometer? He said "yes." Nunez told me to ask him to bring it on board; he said his boat was leaky, and he did not like to put his chronometer in it. Myers, the first mate, then told me to hail again; I did so; and the same answer was given. We ran foul of each other—she being a lazy vessel, *she* ran into us, tho' she tried to prevent it. Nunez ordered the two guns to be shotted,

and said, "he would have his pay out of the rascal or not." The first gun fired was the larboard gun; Captain Nunez ordered it. I was below at the time; when I went on deck, after the first fire, we were about a quarter of a mile apart. I was below, and passed up five cartridges, which were all we had on board. The interval between each fire was five or ten minutes, at most. When I went below, there were six shot in the rack; when I came up there was only one left. Captain Nunez said if he had had more he would sink her. We then hailed him, and strange captain said it was so rough they could not rate the chronometer. Nunez then said he would give five hundred dollars to any one who would bring the other captain on board the Malek; he wanted to give him a flogging. Nunez then asked me if I would go on board the other vessel. I said no. Our boat was lowered and went to the other vessel. She returned without the chronometer, and Mr. Myers then took our chronometer and went on board the other vessel. He afterwards returned with the rates, and we went on our course. I saw two holes through the flying jib of the strange vessel; don't know how they got there. We arrived at Bahia on the 21st of August. The anchor was not down, nor the sails furled when Nunez left her; the two passengers and a gentleman who came on board went with him. On Sunday, about nine o'clock, Nunez returned on board with the two passengers and staid about half an hour. The next morning he came on board again with a man by the name of Davis, and told us there would be a lighter alongside at two o'clock. The men said they would not work until they had seen the consul. Captain Nunez said he would see the consul that afternoon. Next morning he told all those who wanted to see the consul to go on the larboard side. Captain took the men on shore to see the consul, and then told them to return to their duty. I remained with the launch while the men went up to the consul's.

The same day Myers and Nunez went together to see the consul; the next day Myers went on shore to live; the day after, I went before the consul. The consul told me not to allow any boat to come alongside, and to keep a good look-out. Myers kept the log; I kept it for five or days, and brought it up to the 3d or 4th September. I delivered up the log to the consul, by a note or order which I received. This order was brought to me by Silvie, one of the passengers, whom we took in at Fayal. After dinner we were clearing the vessel. The captain of the Yankee pulled alongside, and said to me, "My mate wants to see you." I got in my boat, and just as I was going I saw a boat coming towards the Malek Adhel. I met them, and Silvie said, "I have an order for the log-book." We went on board the Malek, and I gave it to him. I never saw it afterwards. The log was kept in English. (A book is here shown.) This is not the captain's hand-writing, to my knowledge; do not think it is. Captain kept a log-book, but that is not it. The passengers told me they were bound to

Bahia. Nunez was no navigator; he was not fit to carry a vessel from Baltimore to South Carolina; he did not know anything about a chronometer.

Cross-Examination.

Upon cross-examination the witness further deposed:

That when we went on board the Portuguese brig, Curry used no force to compel the captain to come on board the Malek Adhel. Left my pistols in the stern of the boat. Curry carried his on board. My deposition was taken before the consul. I think I made a statement about the money, though perhaps I did not. Mr. Tyler was the acting consul, and he it was who examined me. I do not know whether I stated to him about the money. I told him everything that had transpired in reference to the brig; that was my object, to state everything. Captain Nunez told me that he had given the log to a black boy, and that he (the black boy) had lost it. Consul put interrogatories to me.

Further Cross-Examination of Jno. Myers.

John Myers, upon his further cross-examination, deposed as follows:

We left Captain Nunez at Bahia. When we first arrived Rio, I did not see him. The second time I went ashore I saw him in jail. I do not know how long he remained in jail. We remained at Rio four months. I never saw Nunez after the frigate Potomac arrived. The Enterprize and the Malek Adhel went into Rio together. Nunez was at liberty on shore after the Enterprize arrived. I saw Nunez three or four days before we sailed from Rio; he told me he was going to take command again of the Malek Adhel. Martin went with the rest of the crew before the consul. I saw him in the consul's office. I never saw Martin at Rio; we left him at Bahia. I saw both Curry and Silvie at Rio, but do not know how they got there. A vessel bound direct from Bahia to Guayamas would not stop at Rio. I did not see either Curry or Silvie after the Potomac arrived. I should think the Potomac was at Rio twelve or fifteen days before we sailed for home.

Deposition of John Gonzales.

John Gonzales, a witness produced and examined on the part of the United States, deposes as follows:

Am a cooper. Went out in the Malek Adhel, to live at Guayamas. A gentleman in New York told me he would give me a job there for three years, working steadily. The first vessel we met was an American brig; fired a blank cartridge at her; we then

fired a shot to heave her to. After the second shot was fired, Nunez told the American captain he would have to pay for the shot, or give him some oil, else he would fire again; we then parted company. The next vessel we met was an English vessel; we asked the captain where he was bound to. Witness does not recollect the answer. They asked us for some water, which we gave them, and also gave them some letters. The next vessel we met was an American vessel; fired into her, and told her to bring her chronometer on board; the Malek fired the first and second gun with shot, for the captain to come on board. Third vessel we met was a Portuguese brig; she had two passengers on board; one of them was known to Captain Nunez. Nunez said they had been in the slave trade together; he came on board our brig and dined with Captain Nunez. He asked Nunez for some bread, which was given to him; also some chickens. The passenger told Nunez to mind how he steered, as there were a good many cruizers about, looking for slavers. The passenger also said that the Malek Adhel was better fitted for a pirate than a slaver. The next vessel we met was an English brig; Nunez fired into her twice with shot; the first fire he made was with a blank cartridge. After the shot he told his men to man the boat and go after the chronometer. The English captain said he couldn't send his chronometer, but that Nunez must send his. I was in the cabin, and Nunez ordered me to bring up the muskets and bayonets on deck. I brought up the muskets, but not the bayonets. John Martin said the crew did not wish to fire, and Captain Nunez said they were under his command, and must obey orders. The mate told him that the United States' courts did not allow them to fire into any vessel, and Nunez said that he knew about as much of the United States' laws as the mate did, and every man ought to do what he was told to do. Nunez said he would give any man five hundred dollars who would go on board and bring the strange captain. Nunez sent Curry to the Portuguese vessel to get twenty dollars for the shot, and ten dollars for the oil he spilt. Curry said to Nunez, "I lost one dollar out of my pocket," and gave him nineteen dollars. Nunez asked Curry why he did not bring thirty dollars. Curry said he thought Nunez had said twenty dollars; he did not hear him say thirty dollars. I saw the money; it was in Spanish dollars.

A passenger on board Portuguese brig, said he would give him (Curry) Brazilian dollars; Curry told witness this, and said that he had told him, (the passenger) that he would not take them.—Nunez told Curry to bring some sweetmeats, and he brought a jar. The second mate brought a dog; we were very close when we fired the gun; about a quarter of a mile apart—within close hailing distance—we were very close to the British vessel; I think two shots were fired at British brig, and one cartridge; Nunez said if he had had more powder, he would have sunk him; one of our shots

went through her flying jib. After we got to Bahia, all hands said they wanted to see the American Consul; four or five days after we got to Bahia, we shipped four men; (a book is shewn witness,) this is like the one Captain Nunez had in his cabin; saw the captain write in the book after we got to Bahia; I do not know the captains' hand-writing—can neither read nor write myself—after we went ashore the captain told me to go to a house belonging to Curry's brother; after we got there, Captain Nunez told me I would have to swear about what I saw on the vessel, and he told me I must not tell about the Mexican flag or about the money; I said to him I would tell the truth; Curry's brother told me, that to take an oath on the bible was no more than to take an oath on a stone. Nunez told me if the Consul asked me if the vessels were near when we fired, to say "no, we were far off." After I had been before the Consul, Nunez told me that when he got me to Guyamas he would try to kill me; I never saw Nunez at the Consul's. It was a partner of Mr. Harmony who engaged me to go to Guyamas. Witness further stated, that at Bahia, before he went to the Consul's, Nunez asked him if he would not like four or five hundred dollars when he got to Guyamas; and witness replied that he did not want any money that he did not work for, and that he would not go on board that brig to rob.

Cross-Examination of Jno. Gonzales.

And upon his cross-examination, witness further deposed, that the contract he entered into was a written contract, and he received two months pay in advance. I was to go as passenger, but when we got to sea, Nunez made me work; the contract was signed at Mr. Harmony's; was living with Mr. Shortling when I entered into the contract; Shortling was a cooper on the North river. Captain Nunez went with me alone to Curry's brother's house; Nunez conversed with the Portuguese captain in English. Captain Nunez prevented all the crew from talking Portuguese to the Portuguese vessels; the only persons who could speak Portuguese on board, were the captain, the two passengers, who were Portuguese, witness and the boy; Martin never spoke Portuguese, he spoke Spanish sometimes to the captain; he could speak both. We hailed the Portuguese first in English, and afterwards in Portuguese.

Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland.

Decree.

PETER HARMONY & others, claimants of the brig MALEK ADHEL, *vs.* THE UNITED STATES. } November term, 1841.

Appeal from the District Court of the United States, in and for the District of Maryland.

This cause standing ready for hearing, and testimony having been heard, the same was argued by counsel. It is thereupon, this sixteenth day of December, 1841, by me, R. B. Taney, Chief Justice of the Supreme Court of the United States, and by the authority of the Circuit Court of the United States for the fourth circuit, in and for the district of Maryland, ordered, adjudged and decreed, that the decree of the District Court aforesaid, be, and the same is hereby affirmed, and that the appeal prayed in this case be, and the same is hereby dismissed; each party to pay their respective costs in this court.

R. B. TANEY,
Chief Justice of the Sup. Ct. of the U. States.

Appeal.

From which said decree so as aforesaid rendered, the said Peter Harmony and others, claimants of the said brig Malek Adhel, her tackel, apparel and furniture, by their proctors, pray an appeal to the Supreme Court of the United States, to be held at the city of Baltimore on the second Monday in January next, and to them it is granted.

Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland.

Decree.

THE UNITED STATES, *vs.* The Cargo of the brig MALEK ADHEL. } November term, 1841.

Appeal from the District Court of the United States, in and for the District of Maryland.

This cause standing ready for hearing, and testimony having

been heard, the same was argued by counsel. It is thereupon, this sixteenth day of December, 1841, by me, R. B. Taney, Chief Justice of the Supreme Court of the United States, and by authority of the Circuit Court of the United States for the fourth circuit in and for the Maryland District, ordered, adjudged and decreed, that the decree of the District Court aforesaid, be, and the same is hereby affirmed, and that the appeal in this case be, and the same is hereby dismissed; each party to pay their respective costs in this court.

R. B. TANEY,
Chief Justice of the Sup. Ct. of the U. States.

Appeal.

From which said decree so as aforesaid rendered, the said United States of America, by their proctors, have prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next, and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are transmitted accordingly.

Bond for Costs.

Know all men by these presents, that we are held and firmly bound unto the United States of America, in the full and just sum of one thousand dollars, current money, to be paid to the said United States of America, their certain attorney or assigns, to which payment well and truly to be made and done, we hereby bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this thirteenth day of January, in the year of our Lord one thousand eight hundred and forty-two.

Whereas, lately at a circuit court of the United States for the fourth circuit, in and for the Maryland District, begun and held at the city of Baltimore, on the first Monday of November, in the year of our Lord one thousand eight hundred and forty-one, the said United States of America, by the decree of the same court, recovered judgment of condemnation against the brig Malek Adhel, her tackle, apparel, and furniture, as forfeited to the use of the said United States of America, from which said decree so as aforesaid rendered, a certain Manuel X. Harmony, Leonardo S. Swarez, and Bernard Graham, claimants of the said brig Malek Adhel, her tackle, apparel and furniture, have prayed an appeal to the Su-